IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18009 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GURJAR EDUCATION SOCIETY - Petitioner(s)
Versus
THE DISTRICT EDUCATION OFFICER, & 1 - Respondent(s)

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Appearance :
MR BHARAT JANI for Petitioner(s) : 1,
MS MANISHA L SHAH AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2006

ORAL JUDGMENT

1. Rule. Learned Asst. Government Pleader Ms. Shah wavies service of rule on behalf of respondents. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal.

2. In the present petition, the petitioner trust who is running a Secondary and Higher Secondary School has challenged the action of the respondents in not releasing the sanctioned salary bills of the staff members i.e. teaching and non-teaching employees of the school from March, 2006.

3. Short facts leading to the present petition are as follows:

4. There was dispute between the petitioner and the authorities of the State Government under the Education Department regarding shifting of the school of Secondary and Higher Secondary section. Communication in this regard was made on 16th December, 2005 by the Secretary of Gujarat Secondary and Higher Secondary Board to the District Education

Officer with the copy endorsed to the petitioner. In the said communication, it was conveyed that the petitioner was required to take necessary approval for shifting of the school within a period of one month, on which condition, the petitioner was permitted to run the school. Subsequently by communication dated 27th December, 2005, DEO, Patan informed the petitioner that necessary steps for getting permission for the allocation of the school be taken within the stipulated time, failing which, recognition of the school may be cancelled. Petitioner approached this Court by filing Special Civil Application No.874/06, challenged the said communications dated 16th December, 2006 and 27th December, 2005. Learned Single Judge of this Court however, by judgment dated 22nd February, 2006 rejected the said petition holding that the orders do not call for interference by the Court in exercise of powers under Article 226 of the Constitution of India. The petitioner thereupon preferred Letters Patent Appeal No.683/06 before the Division Bench of this Court questioning the judgment of the learned Single Judge dated 22nd February, 2006. Division

Bench disposed of the Letters Patent Appeal by a decision dated 18th July, 2006. Division Bench noted that an undertaking had been filed by the Secretary of the petitioner trust stating that entire school shall be shifted to the petitioner own building situated at Patan-Unjha Road at Hansapur during Diwali vacation. Division Bench, therefore, observed that in view of this undertaking the Bench permits the appellant to continue its school in the old building till Diwali. It was made clear that thereafter the petitioner herein will have no right to continue in the old premises.

5. It is the case of the petitioner that despite the extension granted by the Division Bench, the respondents are not releasing the salary grant for teaching and non-teaching staff of the petitioner school. It is contended on behalf of the petitioner that the stand of the respondents is wholly unjustified. Learned Asst. Government Pleader Ms. Shah submitted that the authorities perceive that the Letters Patent Appeal having been dismissed, decision of the learned Single Judge stands upheld and that,

therefore, only prayer granted to the petitioner is to give additional time for shifting of the school. The orders passed by the authorities however are not interfered with and that, therefore, question of releasing grant does not arise.

6. I have considered the submissions made on behalf of the parties and also perused the material on record.

7. Neither under communication dated 16th December, 2005 nor in communication dated 27th December, 2005 there is any indication that the recognition of the petitioner stand cancelled. Both communications only put the petitioner to notice that the school should be shifted within the prescribed time with necessary approval from the authorities, failing which, recognition of the petitioner is liable to be cancelled. Neither of these two orders can be treated has cancelling the recognition of the petitioner. In any case, time for shifting of the school stands extended by the order of the Division Bench, whereby the petitioner is granted additional

time upto Diwali vacation to shift the school as undertaken. At least till that date, the petitioner cannot face the eventuality of its recognition being treated as cancelled. Respondents, therefore, cannot withhold the salary grant for teaching and non-teaching staff of petitioner's school.

8. In view of these observations, I find that the request of the petitioner is required to be accepted. It is accordingly directed that the respondents shall release the salary grant of the petitioner as per rules which is withheld since March, 2006. This shall be done expeditiously and in any case not later than 30th September, 2006.

9. Rule is made absolute. No costs.

Direct service is permitted.

(Akil Kureshi, J.)

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